

(The form itself is entitled "release and waiver." A hazard training check list also appears on the form. The witnesses in this case at various times referred to the form as a "waiver," a "release" and as a "hazard checklist." For the convenience of the reader all such references are to the document received in evidence as Contestant Exhibits 3 and 6). The portion of the instrument particularly relied on by Emery provides as follows:

Waiver of Liability

The undersigned, in consideration of being allowed to come upon the Deer Creek mine property (insert name of mine), hereby forever releases, discharges and waives as to Emery Mining Corporation ("Emery"), any and all claims rights of causes of action that the undersigned now has or may hereafter acquire against Emery on account of any damages sustained or injuries suffered, presently or hereafter, while present upon or within the mine property. The undersigned further agrees to hold Emery harmless on account of any and all liability which may attach to Emery on account of damages sustained or injuries suffered by the undersigned while upon or within the mine property. All references to Emery shall include its officers, directors, shareholders, employees and agents.

Emery, in its notice of contest, asserts that Mr. Rabbitt failed to comply with Emery's notice and waiver requirements. When MSHA supported Mr. Rabbitt and issued a citation Emery permitted Mr. Rabbitt to enter the mine without signing the required release form.

In its contest seeking to vacate this citation Emery insists that its requirements are reasonable and prudent; further, Emery asserts it did not violate § 103(f), the statutory grant of walk-around rights.

Section 103(f) of the Act, 30 U.S.C. § 813(f), the statutory provision in issue here, provides as follows:

Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine made pursuant to the provisions of subsection (a), for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine. Where there is no authorized miner representative, the Secretary or his authorized representative shall consult with a reasonable number of miners concerning matters of health and safety in such mine. Such representative of